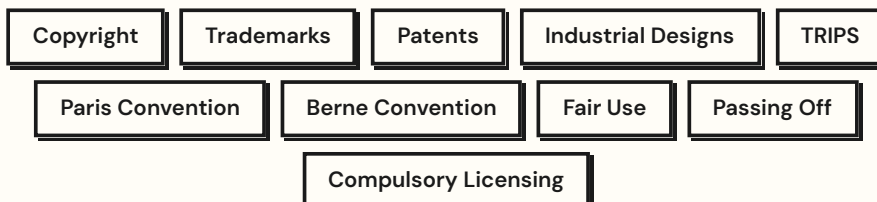


Law**Stories**

Intellectual Property Law

Q&A Exam Guide

◦ Osmania University ◦ Year 2 · IV Semester ◦ Part A



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Intellectual Property Law | Unit 1 | Part A

Introduction to IP – Short Notes

Q1. Write a short note on Geographical Indication.

PRIORITY: ★★★ | PART: A | FREQ: 7

A Sign Identifying Origin-Linked Quality in Goods

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities, reputation, or characteristics essentially attributable to that origin. It is governed by the Geographical Indications of Goods (Registration and Protection) Act (GI Act), 1999. Three essential elements constitute a GI: identification of geographic origin, quality or reputation linked to that origin, and an essential nexus between the product and the place.

Legal Foundation

Section 2(1)(e), Geographical Indications of Goods (Registration and Protection) Act (GI Act), 1999 : defines GI as an indication identifying goods as originating from a territory where quality, reputation, or characteristics are essentially attributable to geographic origin

Article 22, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994 : mandates WTO members to provide legal means to prevent use of GI that misleads the public as to geographic origin

Mnemonic: "ORANGE"

Origin | Registration | Authorised users | Non-transferable | Geographic nexus | Examples

Origin | Registration | Authorised users | Non-transferable | Geographic nexus | Examples

Origin

A GI identifies goods as originating from a specific geographic area where the product's quality or reputation is essentially attributable to that origin. The origin-quality link is the defining characteristic: without it, the sign is merely a place name. Section 2(1)(e) requires that the quality, reputation, or other characteristic be "essentially attributable" to geographic origin.

Registration

Registration is made at the GI Registry (Chennai) by an association of persons, producers, or organisation representing the interest of producers. Duration is 10 years, renewable indefinitely. The application undergoes examination, publication in the GI Journal, and an opposition period before registration is granted (Sections 6 to 17).

Authorised users

Only authorised users registered under the Act may use the GI (Section 17). An authorised user is a producer of goods from the indicated geographic area who is registered with the GI Registry. This ensures only genuine producers from the origin area can use the indication commercially.

Non-transferable

Unlike trademarks which are individually owned and transferable, a GI is community property tied to the geographic area. It cannot be assigned, transmitted, or licensed to producers outside the indicated area. This is because the GI reflects the qualities of the place, not the enterprise.

Geographic nexus

The nexus between product and place must be essential, not incidental. The quality, reputation, or characteristics must flow from the geographic origin: climate, soil, traditional methods of production, or inherited skills of the local population. If the same product can be equally produced elsewhere, the nexus is absent.

Examples

Darjeeling Tea (West Bengal), Pochampally Ikat (Telangana), Hyderabad Haleem (Telangana), Tirupati Laddu (Andhra Pradesh), Kolhapuri Chappal (Maharashtra), Kancheepuram Silk (Tamil Nadu), and Basmati Rice are registered Indian GIs demonstrating diverse product categories.

Scotch Whisky Association v Golden Bottling (Bombay High Court, 2006)

Facts

An Indian company marketed whisky using the word "Scot" in a manner suggesting Scottish origin. The Scotch Whisky Association objected to the use on Indian-made whisky.

Held

The use of "Scot" on Indian-made whisky is misleading and constitutes infringement of the geographical indication. The term identifies whisky originating from Scotland.

Principle

GI protection extends to derivatives and evocations of the protected indication, not just the exact registered term.

Tea Board of India v ITC Ltd (Calcutta High Court, 2011)

Facts

The Tea Board of India, registered proprietor of the "Darjeeling" GI, objected to use of the Darjeeling name on products not sourced from the Darjeeling region.

Held

The Court upheld the Tea Board's exclusive right as registered proprietor. Only authorised users producing tea in the Darjeeling region may use the GI.

Principle

GI registration confers exclusive rights on the registered proprietor and authorised users; unauthorised use on non-origin goods is infringement under Section 22.

GI as a Collective Right Tied to Territory, Not Enterprise

Geographical Indication is fundamentally a collective intellectual property right, distinguishable from trademarks by its community ownership, non-transferability, and origin-quality nexus. Under the GI Act, 1999, it serves the dual function of protecting producer reputation and preventing consumer deception regarding geographic origin of goods.

Q2. Write a short note on Plant Varieties Protection.

PRIORITY: ★★★ | PART: A | FREQ: 5

India's Sui Generis System Balancing Breeders' and Farmers' Rights

Plant varieties in India are protected under the Protection of Plant Varieties and Farmers' Rights Act (PPV&FR Act), 2001, a sui generis system permitted by Article 27.3(b) of the TRIPS Agreement. The Act balances the commercial rights of plant breeders with the traditional seed-saving practices of farmers. Plants are excluded from patent protection under Section 3(j) of the Patents Act, 1970.

Legal Foundation

Section 28, Protection of Plant Varieties and Farmers' Rights Act (PPV&FR Act), 2001 : confers exclusive rights on breeders to produce, sell, market, distribute, import, or export the protected variety
Article 27.3(b), TRIPS Agreement, 1994 : permits WTO members to provide plant variety protection through patents, a sui generis system, or a combination thereof

Mnemonic: "NDUBC"

NDUS criteria | Duration | Uniqueness (sui generis) | Breeders' rights | Community and farmers' rights

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NDUS criteria

A new plant variety must satisfy four conditions for registration: Novel (not previously sold or disposed of), Distinct (clearly distinguishable from existing varieties), Uniform (consistent characteristics across the variety), and Stable (characteristics remain unchanged over successive generations). These criteria are the gateway to protection.

Duration

Protection lasts 15 years from the date of registration for crops and 18 years for trees and vines. After expiry, the variety enters the public domain and anyone may commercialise it. This is shorter than patent protection (20 years), reflecting the policy of enabling broader agricultural access.

Uniqueness (sui generis)

India chose the sui generis option under TRIPS Article 27.3(b) rather than extending patent protection to plant varieties. This is unique because it simultaneously protects breeders' commercial interests and farmers' traditional practices: no other national system does both with equal legislative force.

Breeders' rights

Section 28 grants the registered breeder exclusive rights to produce, sell, market, distribute, import, and export the protected variety. The breeder may license or assign these rights. Infringement occurs when any person performs these acts without the breeder's authorisation.

Community and farmers' rights

Section 39 protects farmers' rights to save, use, sow, resow, exchange, share, or sell farm produce of a protected variety (but not branded seed). Section 41 provides community rights: communities that contributed to the evolution of a variety through conservation are entitled to compensation. This triple balance (breeders, farmers, communities) is India's distinctive contribution.

Monsanto Technology LLC v Nuziveedu Seeds Ltd (Supreme Court of India, 2019)

Facts

Monsanto held patents on Bt cotton technology (Bollgard and Bollgard-II). Nuziveedu, an Indian seed company, challenged whether patent protection could extend to plant varieties through the backdoor of genetically modified traits.

Held

The SCI remanded the case to the Division Bench but observed that the interface between the Patents Act and the PPV&FR Act on GM traits requires careful adjudication. The question of whether a patented gene in a plant variety attracts patent or PPV&FR protection remains unresolved.

Principle

The boundary between patent protection for biotechnological processes and plant variety protection under the PPV&FR Act is a live legal question requiring legislative and judicial clarification.

Diamond v Chakrabarty (Supreme Court of the United States, 1980)

Facts

A microbiologist created a genetically engineered bacterium capable of breaking down crude oil. The US Patent Office refused the patent on the ground that living organisms are not patentable.

Held

The US Supreme Court held that a live, human-made micro-organism is patentable subject matter. "Anything under the sun that is made by man" is eligible for patent protection.

Principle

Genetically engineered organisms are patentable (US position). India takes a different approach: Section 3(j) excludes plants and animals, directing protection to the PPV&FR regime.

PPV&FR Act as a Balanced IP Framework for Agriculture

The PPV&FR Act, 2001 represents India's policy choice to protect plant innovation through a sui generis system that incentivises breeding while preserving farmers' traditional seed sovereignty. Section 3(j) of the Patents Act ensures plants remain outside patent monopoly, channelling protection to this balanced statutory regime.

Q3. Write a short note on Computer Programme Per Se.

PRIORITY: ★★★ | PART: A | FREQ: 3

The Patent Exclusion for Standalone Software Under Section 3(k)

Section 3(k) of the Patents Act, 1970 excludes "a computer programme per se" from patentability. The qualifier "per se" (by itself) is the critical interpretive phrase: a standalone algorithm or software code is not patentable, but a computer-implemented invention that produces a "technical effect" beyond the normal interaction between software and hardware may qualify for patent protection. Software is separately protected as a "literary work" under copyright.

Legal Foundation

Section 3(k), Patents Act, 1970 : excludes "a computer programme per se" from the definition of patentable invention

Section 2(o), Copyright Act, 1957 : includes "computer programme" within the definition of "literary work," granting automatic copyright protection to source code

Per se qualifier | Exclusion scope | Technical effect | Copyright alternative | Dual protection

Per se qualifier

The words "per se" limit the exclusion. A computer programme "by itself" (a bare algorithm, a piece of code in isolation) is not patentable. But the exclusion does not extend to all computer-related inventions. The Delhi High Court in *Ferid Allani v Union of India* (2020) confirmed that "per se" is the limiting qualifier that prevents automatic rejection of every software-related patent application.

Exclusion scope

Section 3(k) excludes three categories: mathematical methods, business methods, and computer programmes per se. The exclusion targets abstract algorithms that do not interact with the physical world. A method of calculating insurance premiums (business method + software) would be excluded. A method of controlling an industrial process through software may not be.

Technical effect

A computer-implemented invention that produces a "technical effect" or "technical contribution" beyond the mere running of code on hardware may be patentable. The technical effect must be demonstrated in the patent specification. The Indian Patent Office Guidelines (2017) require applicants to show that the invention solves a technical problem in the real world.

Copyright alternative

Software receives automatic copyright protection as a "literary work" under Section 2(o) of the Copyright Act, 1957. No registration is needed. Copyright protects the source code from verbatim copying but does not protect the underlying idea, algorithm, or functionality. Section 52(1)(aa) permits making backup copies as fair use.

Dual protection

Software thus occupies a unique position: copyright protects its expression (the code), while patent may protect its technical application (if it meets the "technical effect" threshold). The two protections are complementary, not overlapping: copyright covers the code; patent covers the technical process the code implements.

Ferid Allani v Union of India (Delhi High Court, 2020) Facts

A patent application for a method of accessing and retrieving information from a network was rejected by the Patent Office under Section 3(k) as a "computer programme per se."

 Held

Section 3(k) excludes "computer programme per se," not all computer-related inventions. The Patent Office must examine whether the invention demonstrates a "technical effect" beyond mere execution of code. Automatic rejection solely because software is involved is impermissible.

 Principle

"Per se" is the limiting qualifier: computer-implemented inventions with technical effect are not automatically excluded from patentability.

Ericsson v Intex Technologies (Delhi High Court, 2015) Facts

Ericsson held patents on technology standards essential to mobile telecommunications (standard essential patents). Intex argued that the patents were effectively software patents excluded under Section 3(k).

 Held

The Court granted interim injunction in favour of Ericsson, recognising that the patents covered technical processes implemented through software, not bare computer programmes. The technical contribution to telecommunications was the patentable element.

 Principle

Software implementing a technical standard with real-world technical contribution is not excluded by Section 3(k); the technical application distinguishes it from a "programme per se."

Section 3(k) as a Threshold, Not an Absolute Bar

The exclusion of "computer programme per se" under Section 3(k) is a threshold test, not a blanket prohibition on all software-related patents. The determinative question is whether the invention produces a technical effect beyond the programme itself, as confirmed in *Ferid Allani* (2020).

Q4. Write a short note on the Meaning of Intellectual Property.

PRIORITY: ★★★ | PART: A | FREQ: 4

Intangible Creations of the Mind Protected by Exclusive Rights

Intellectual property (IP) is a category of property consisting of intangible creations of the human mind, protected by law, conferring on the creator exclusive rights to use, exploit, and control the creation for a specified period. The World Intellectual Property Organization (WIPO) defines IP as "creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce."

Legal Foundation

Article 2(viii), Convention Establishing the World Intellectual Property Organization (WIPO Convention), 1967 : defines intellectual property to include rights relating to literary, artistic, and scientific works; inventions; industrial designs; trademarks; and protection against unfair competition
 Article 1(2), Paris Convention for the Protection of Industrial Property, 1883 : defines "industrial property" as patents, utility models, industrial designs, trademarks, service marks, trade names, and indications of source

Intangible | Creation | Exclusive rights | Limited duration | Territorial

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Intangible

IP is non-physical: it exists in the creation, not its physical embodiment. A book is tangible property; the text within is intellectual property. A medicine bottle is tangible; the chemical formula is IP. This intangibility distinguishes IP from corporeal property and creates the "free-rider problem" that justifies legal protection.

Creation

IP protects the product of human intellect: creativity (copyright), innovation (patents), distinctiveness (trademarks), aesthetic appeal (designs). Natural phenomena, discovered facts, and abstract ideas standing alone are not IP. The creation must involve human intellectual effort.

Exclusive rights

IP grants the creator a negative right: the exclusive right to exclude others from making, using, selling, licensing, or distributing the creation without permission. It is fundamentally a right to prevent others, not necessarily a positive right to use (other laws may restrict use).

Limited duration

Most IP rights are time-bound, reflecting a policy bargain between creator and society. Patents expire after 20 years. Copyright expires 60 years after the author's death. Designs last 15 years. Only trademarks can be renewed indefinitely (requiring continued use). After expiry, the creation enters the public domain.

Territorial

IP rights are national in scope. A patent in India does not protect in the United States. International treaties (Paris Convention, Berne Convention, TRIPS) create frameworks for cross-border recognition and minimum standards but do not create a single global IP right. Each country grants and enforces its own IP.

V.K. Industries v HCL Ltd (Delhi High Court, 2014)

Facts

A dispute arose over whether a product design attracted overlapping IP protection under different statutes (copyright, design, and trademark for the same product feature).

Held

Different forms of IP protect different aspects of a creation. Classification determines which statute applies. Each IP right operates under its own statutory regime with distinct scope and duration.

Principle

IP classification is jurisdictional: the same creation may attract multiple protections, but each operates under its own statute. Misclassification leads to wrong remedy.

Star India Pvt Ltd v Leo Burnett (India) Pvt Ltd (Bombay High Court, 2003)

Facts

Star India claimed copyright in its TV channel format and presentation style. The defendant created a similar programme format.

Held

A programme format lacks sufficient fixation and specificity to constitute a "dramatic work" under the Copyright Act. Abstract concepts and formats, however commercially valuable, may fall outside IP protection.

Principle

Not everything creative qualifies as IP. Protection requires the creation to fall within a recognised statutory category with sufficient originality and fixation.

IP as a Policy Bargain Between Creator Exclusivity and Public Access

Intellectual property represents a calibrated legal bargain: the State grants temporary exclusive rights to incentivise creation, while the public eventually gains free access upon expiry. The WIPO framework and national statutes operationalise this bargain across all recognised categories of IP.

Q5. Write a short note on Industrial Property.

PRIORITY: ★★★ | PART: A | FREQ: 3

The Branch of IP Covering Creations with Commercial Application

Industrial property is the branch of intellectual property that covers creations with industrial or commercial application. It is distinguished from copyright (which protects literary and artistic expression) by its commercial orientation and mandatory registration requirement. The Paris Convention for the Protection of Industrial Property, 1883 is the foundational international treaty establishing common principles for industrial property protection across member states.

Legal Foundation

Article 1(2), Paris Convention for the Protection of Industrial Property, 1883 : defines industrial property to include patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source, and repression of unfair competition

Article 1(1), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994 : establishes minimum standards for all categories of IP including industrial property for all WTO members

Patents | Trademarks | Designs | Geographical Indications | Registration mandatory

Patents

Patents protect inventions that are new, involve an inventive step, and are capable of industrial application. Governed by the Patents Act, 1970. Duration: 20 years from the date of filing. The inventor must fully disclose the invention in the patent specification in exchange for temporary monopoly.

Trademarks

Trademarks protect distinctive signs (words, logos, shapes, sounds, colours) capable of distinguishing the goods or services of one enterprise from another. Governed by the Trade Marks Act, 1999. Duration: 10 years, renewable indefinitely upon payment of renewal fees and continued use.

Designs

Industrial designs protect the aesthetic or ornamental features (shape, configuration, pattern, composition of lines or colours) applied to an article of manufacture. Governed by the Designs Act, 2000. Duration: 10 years, extendable by 5 years. Design protects appearance, not function.

Geographical Indications

GIs protect signs identifying goods as originating from a specific geographic area where quality or reputation is attributable to that origin. Governed by the GI Act, 1999. Duration: 10 years, renewable indefinitely. Community ownership distinguishes GI from other industrial property forms.

Registration mandatory

Unlike copyright (which arises automatically), all forms of industrial property require registration for enforcement. No registration, no statutory remedy. This is a fundamental distinction: copyright is born; industrial property must be applied for, examined, and granted.

Cadila Healthcare Ltd v Cadila Pharmaceuticals Ltd (Supreme Court of India, 2001)

Facts

Two pharmaceutical companies used similar names (Cadila Healthcare and Cadila Pharmaceuticals). A dispute arose about trademark infringement and the test for deceptive similarity in pharmaceutical products.

Held

The SCI held that the test for deceptive similarity is stricter for pharmaceutical products than ordinary consumer goods because confusion in medicines can endanger life. The average consumer of medicines is less discerning.

Principle

Industrial property protection (trademarks) serves consumer safety: the deceptive similarity test is heightened where public health is at stake.

Novartis AG v Union of India (Supreme Court of India, 2013)

Facts

Novartis sought a patent for the beta-crystalline form of imatinib mesylate (cancer drug Glivec). The Indian Patent Office rejected it under Section 3(d) as a new form of a known substance without enhanced efficacy.

Held

Section 3(d) is valid and TRIPS-compliant. India may set a higher threshold for pharmaceutical patents to prevent "evergreening" (incremental patenting of minor modifications).

Principle

Industrial property protection (patents) must balance innovation incentive with public access, particularly for essential medicines. Section 3(d) operationalises this balance.

Industrial Property as Registered Commercial IP

Industrial property constitutes the commercially-oriented, registration-dependent branch of IP. The Paris Convention (1883) and TRIPS Agreement (1994) establish international minimum standards, while national statutes (Patents Act, Trade Marks Act, Designs Act, GI Act) implement protection within their territorial jurisdiction.

Intellectual Property Law | Unit 2 | Part A

International Protection of IP – Short Notes

Q1. Write a short note on the TRIPS Agreement.

PRIORITY: ★★★ | PART: A | FREQ: 6

The WTO Treaty Establishing Enforceable Minimum IP Standards

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994 is Annex 1C of the Marrakesh Agreement establishing the World Trade Organization (WTO). It sets minimum IP standards for all 164 WTO members and, uniquely among IP treaties, links non-compliance to trade sanctions through the WTO Dispute Settlement Body (DSB). TRIPS adopts a "Paris-plus, Berne-plus" approach, incorporating the substantive provisions of both foundational conventions while adding enforcement obligations and most-favoured-nation treatment.

Legal Foundation

Article 27(1), TRIPS Agreement, 1994 : patents must be available for all inventions, products and processes, in all fields of technology, provided they are new, involve an inventive step, and are capable of industrial application

Article 41(1), TRIPS Agreement, 1994 : members shall ensure that enforcement procedures are available under their law to permit effective action against any act of IP infringement

Mnemonic: "SCFED"

Standards | Coverage | Flexibilities | Enforcement | Dispute settlement

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Standards

TRIPS establishes minimum standards across all IP categories: patents available for products and processes in all fields for minimum 20 years (Article 33); trademarks for any distinctive sign, minimum 7 years renewable (Article 18); copyright per Berne standards plus computer programs and rental rights (Articles 9 to 14); geographical indications with enhanced protection for wines and spirits (Article 23).

Coverage

TRIPS covers seven IP categories comprehensively: copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and protection of undisclosed information (trade secrets). No previous single treaty covered all forms of IP with enforceable minimum standards.

Flexibilities

Compulsory licensing is permitted under Article 31 subject to specified conditions (prior negotiation, adequate remuneration, domestic supply, judicial review). The Doha Declaration on TRIPS and Public Health (2001) confirmed members' right to use compulsory licensing for public health emergencies. Articles 7 and 8 allow members to balance IP protection with public interest.

Enforcement

TRIPS Part III (Articles 41 to 61) mandates four categories of enforcement: civil remedies (injunctions, damages, seizure), provisional measures (ex parte orders, Anton Piller orders), border measures (customs suspension of infringing goods), and criminal procedures for wilful counterfeiting and piracy on a commercial scale. No previous IP treaty required enforcement.

Dispute settlement

Non-compliance with TRIPS can be challenged before the WTO Dispute Settlement Body. If a member fails to implement TRIPS standards, the complainant can obtain authorisation for trade sanctions (cross-retaliation). This makes TRIPS qualitatively different from WIPO-administered treaties which lack enforcement mechanisms.

Novartis AG v Union of India (Supreme Court of India, 2013) Facts

Novartis sought a patent for the beta-crystalline form of imatinib mesylate (cancer drug Glivec). The Indian Patent Office rejected it under Section 3(d) as a new form of a known substance without enhanced efficacy.

 Held

Section 3(d) is valid and TRIPS-compliant. India is entitled to define "invention" to exclude mere new forms of known substances unless they demonstrate enhanced therapeutic efficacy.

 Principle

TRIPS allows members to define patentability standards within the framework. India's Section 3(d) is a legitimate exercise of TRIPS flexibility, not a violation of Article 27.

Natco Pharma Ltd v Bayer Corporation (Controller of Patents, India, 2012) Facts

Bayer held a patent for sorafenib tosylate (Nexavar, a cancer drug) priced at approximately Rs 2.8 lakh per month. Natco applied for a compulsory licence under Section 84 arguing the drug was not available at a reasonably affordable price.

 Held

Compulsory licence granted. Natco could manufacture and sell at approximately Rs 8,800 per month with 6% royalty to Bayer. All three grounds under Section 84 were independently satisfied.

 Principle

India's first compulsory licence demonstrates legitimate use of TRIPS Article 31 flexibility. Availability at an affordable price is a valid ground for compulsory licensing.

TRIPS as the Architecture of Modern Global IP Governance

The TRIPS Agreement transformed IP from a voluntary cooperative framework into an enforceable trade obligation. Its minimum standards, combined with the WTO dispute settlement mechanism, ensure that IP protection is a condition of participation in the global trading system while preserving flexibilities for public health and development.

Q2. Write a short note on the Paris Convention.

PRIORITY: ★★★ | PART: A | FREQ: 3

The Foundational Treaty for International Industrial Property Protection

The Paris Convention for the Protection of Industrial Property (1883) is the foundational multilateral treaty governing patents, trademarks, industrial designs, trade names, and unfair competition. Administered by the World Intellectual Property Organization (WIPO), it has 179 member states including India (acceded 1998). Its most distinctive contribution is the right of priority, which allows an applicant filing in one member state to preserve that filing date when subsequently filing in other member states.

Legal Foundation

Article 4, Paris Convention for the Protection of Industrial Property, 1883 : establishes the right of priority (12 months for patents, 6 months for trademarks and designs)

Article 2, Paris Convention, 1883 : establishes national treatment as between nationals of different member states

Priority right | National treatment | Independence | Unfair competition | Trade names

Priority right

Article 4 provides the right of priority: when an applicant files an IP application in one member state, they have a priority period to file in other member states claiming the original filing date. Patents and utility models: 12 months. Trademarks and designs: 6 months. Publications or filings by third parties during this period do not invalidate the later applications.

National treatment

Article 2 requires each member state to grant nationals of other member states the same protection it grants to its own nationals. An Indian inventor filing in France must receive identical treatment to a French inventor. This does not require harmonised laws but requires equal treatment within each jurisdiction.

Independence

Article 4bis establishes that patents granted in different member states for the same invention are independent. Revocation in one country does not affect the patent in another. Similarly, Article 6 provides independence of trademarks across jurisdictions. Each national office decides autonomously.

Unfair competition

Article 10bis requires members to provide effective protection against unfair competition: acts creating confusion with a competitor's goods or establishment, false allegations discrediting a competitor, and indications misleading the public about the nature or characteristics of goods. This provides a treaty-level basis for passing off claims.

Trade names

Article 8 provides that trade names (the name under which a business operates) are protected in all member states without any obligation to file or register. This is broader than trademark protection which typically requires registration for enforcement.

N.R. Dongre v Whirlpool Corporation (Supreme Court of India, 1996)

Facts

Whirlpool, a US corporation, had registered "Whirlpool" as a trademark in India but had not used it in India. An Indian entity registered and used an identical mark. Whirlpool sought injunction claiming prior rights under the Paris Convention.

Held

The SCI recognised Whirlpool's prior rights. A foreign trademark with international reputation and registered in India has enforceable rights even without use in India. The Paris Convention principle of national treatment supports protection of foreign marks.

Principle

The Paris Convention's national treatment principle, combined with trans-border reputation, entitles foreign trademark owners to protection in India even prior to actual commercial use within the territory.

Milment Oftho Industries v Allergan Inc (Supreme Court of India, 2004)

Facts

Allergan, a US company, had a registered trademark for an eye care product. An Indian company adopted a deceptively similar mark. The issue was whether a foreign mark with worldwide reputation is protected in India.

Held

The SCI held that marks with worldwide reputation are protected in India. An Indian entity cannot adopt a deceptively similar mark of a well-known foreign brand even if the foreign brand has limited presence in India.

Principle

National treatment and the Paris Convention framework protect well-known foreign marks in India against deceptive adoption by domestic entities.

Paris Convention as the Foundation of Cross-Border Industrial Property Rights

The Paris Convention established the structural principles (priority, national treatment, independence) upon which all subsequent industrial property treaties are built. Its 1883 framework remains operative and was incorporated into TRIPS (Article 2.1), ensuring its provisions are binding on all 164 WTO members.

Q3. Write a short note on the Berne Convention.

PRIORITY: ★★★ | PART: A | FREQ: 3

The International Treaty Guaranteeing Automatic Copyright Protection

The Berne Convention for the Protection of Literary and Artistic Works (1886) is the foundational multilateral treaty for copyright, administered by WIPO, with 181 member states including India (acceded 1928). Its most distinctive principle is automatic protection: copyright must subsist from the moment of creation without any formality such as registration, deposit, or notice. This is why the Indian Copyright Act, 1957 does not require registration for copyright to exist.

Legal Foundation

Article 5(2), Berne Convention for the Protection of Literary and Artistic Works, 1886 : copyright protection shall not be subject to any formality; it is automatic upon creation

Article 6bis, Berne Convention, 1886 : independently of economic rights, the author retains the right to claim authorship (paternity) and to object to distortion or modification prejudicial to honour or reputation (integrity)

Mnemonic: "AMMTE"

Automatic protection | Moral rights | Minimum term | Three-step test | Exceptions

Automatic protection | Moral rights | Minimum term | Three-step test | Exceptions

Automatic protection

Article 5(2) is the Convention's defining contribution: copyright protection must not be subject to any formality. No registration, no deposit, no copyright notice is required. The moment a work is created and fixed in tangible form, it is protected in all 181 member states. India's Copyright Act implements this: registration is optional (evidentiary), not constitutive of rights.

Moral rights

Article 6bis establishes two moral rights independent of economic rights: the right of paternity (to claim authorship) and the right of integrity (to object to distortion, mutilation, or modification prejudicial to the author's honour or reputation). These survive transfer of economic rights and are reflected in Section 57 of the Indian Copyright Act.

Minimum term

Article 7 requires minimum protection of the author's life plus 50 years. India exceeds this, providing life plus 60 years for literary, dramatic, musical, and artistic works. For films and sound recordings, India provides 60 years from publication. Members may provide longer terms but not shorter.

Three-step test

Article 9(2) permits exceptions to the reproduction right only if: (i) in certain special cases, (ii) not conflicting with normal exploitation of the work, and (iii) not unreasonably prejudicing the author's legitimate interests. This three-step test is the global template for all fair use and fair dealing provisions, including India's Section 52.

Exceptions

Beyond the three-step test, the Convention permits specific exceptions: quotation (Article 10), use for teaching (Article 10(2)), and press reproduction of articles on current events (Article 10bis). These are reflected in the Indian Copyright Act's fair dealing provisions under Section 52(1)(a) for research, criticism, and review.

Eastern Book Company v D.B. Modak (Supreme Court of India, 2008)

Facts

Eastern Book Company published Supreme Court judgments with headnotes, paragraph numbering, and editorial additions. The question was whether copyright subsists in judicial judgments and derivative editorial work.

Held

The SCI held that no copyright subsists in judicial judgments themselves (government works). However, the editorial additions (headnotes, paragraph arrangement) involve sufficient creativity to attract copyright. The test is "modicum of creativity," not mere "sweat of the brow."

Principle

Originality under the Berne standard requires a minimum degree of creativity. India adopted the "modicum of creativity" standard consistent with Berne's protection of "intellectual creations."

R.G. Anand v Delux Films (Supreme Court of India, 1978)

Facts

A playwright claimed that a film was based on his play without permission. The film had a similar theme but different treatment, dialogue, and scenes.

Held

The SCI held that copyright protects expression, not ideas. Two works can share a common theme without infringement if the expression, treatment, and execution are independently created.

Principle

The idea-expression dichotomy is fundamental to copyright: Berne protects original expression, not underlying ideas. Similarity of theme does not constitute infringement.

Berne Convention as the Global Standard for Automatic Copyright

The Berne Convention's principles of automatic protection, moral rights, and minimum standards form the bedrock of global copyright. Its incorporation into TRIPS (Article 9.1) ensures that all WTO members must comply with Berne standards (except moral rights, excluded from TRIPS enforcement under Article 9.2).

Q4. Write a short note on WIPO.

PRIORITY: ★★★ | PART: A | FREQ: 3

The UN Specialized Agency Administering International IP Treaties

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations, established by the WIPO Convention of 1967 (effective 1970), headquartered in Geneva, with 193 member states. WIPO is responsible for developing, administering, and operating the international IP treaty framework and filing systems. Unlike the WTO which enforces TRIPS through trade sanctions, WIPO operates on a cooperative, technical assistance model without enforcement powers.

Legal Foundation

Article 3, Convention Establishing the World Intellectual Property Organization (WIPO Convention), 1967 : defines WIPO's objectives as promoting IP protection worldwide through cooperation among states and with other international organisations

Article 4, WIPO Convention, 1967 : lists WIPO's functions including administration of international treaties, technical assistance, and registration services

Treaty administration | Assistance (technical) | Dispute resolution | Classification | Registration systems

Treaty administration

WIPO administers 26 international IP treaties including the Paris Convention (industrial property), Berne Convention (copyright), Patent Cooperation Treaty (PCT), Madrid System (trademarks), Hague System (industrial designs), and the WIPO Copyright Treaty (WCT). It serves as the secretariat, maintains registers, and facilitates treaty revisions.

Assistance (technical)

WIPO provides technical assistance to developing countries for building IP infrastructure: training patent and trademark examiners, helping draft national IP legislation, supporting modernisation of IP offices, and conducting capacity-building programs. This function bridges the gap between developed and developing nations in IP implementation.

Dispute resolution

The WIPO Arbitration and Mediation Center is the primary forum for resolving domain name disputes under the Uniform Domain-Name Dispute-Resolution Policy (UDRP). Over 60,000 cases have been decided since 1999. The Center also provides general IP-related arbitration and mediation services as an alternative to national court litigation.

Classification

WIPO maintains and regularly revises the international classification systems: the International Patent Classification (IPC) for patents, the Nice Classification for trademarks, and the Locarno Classification for industrial designs. These systems enable uniform categorisation of IP filings across all member states and facilitate searching and examination.

Registration systems

WIPO operates three major international filing systems: the PCT system for patents (enabling single international application designating 150+ countries), the Madrid System for trademarks (single application for 130+ countries), and the Hague System for industrial designs (centralised design registration). These systems reduce cost, time, and complexity of cross-border IP filings.

WIPO UDRP: Tata Sons Ltd v D. Narayan (WIPO Case No. D2011-1463)

Facts

Tata Sons filed a UDRP complaint against a registrant who had registered domain names incorporating the "TATA" trademark without authorisation.

Held

The WIPO panel ordered transfer of the domain names to Tata Sons, finding: the domains were identical or confusingly similar to the TATA trademark, the respondent had no legitimate interest, and the domains were registered and used in bad faith.

Principle

WIPO UDRP provides effective international remedy against cybersquatting: bad faith registration of domain names incorporating well-known trademarks can be challenged and transferred through WIPO's administrative process.

India's Turmeric Patent Challenge (USPTO, 1997)

Facts

The University of Mississippi obtained US Patent 5,401,504 for use of turmeric in wound healing. India's CSIR challenged the patent before the USPTO, producing prior art from ancient Sanskrit texts demonstrating centuries-old knowledge of turmeric's healing properties.

Held

The USPTO revoked the patent after CSIR demonstrated prior art. The claimed invention lacked novelty because the healing properties were documented traditional knowledge.

Principle

International IP examination requires access to prior art from all jurisdictions. This case exposed gaps in patent office search capabilities and led to creation of the TKDL, highlighting WIPO's role in facilitating international cooperation in examination.

WIPO as Administrator, Not Enforcer, of Global IP

WIPO serves as the institutional infrastructure of international IP: administering treaties, operating filing systems, resolving domain disputes, and assisting developing nations. Its cooperative model complements the enforcement-oriented WTO/TRIPS framework, with both coexisting in the architecture of global IP governance.

Q5. Write a short note on the Patent Cooperation Treaty.

PRIORITY: ★★★ | PART: A | FREQ: 2

A Unified International Patent Filing System Without Granting Power

The Patent Cooperation Treaty (PCT), 1970 provides a unified procedure for filing patent applications in multiple countries simultaneously through a single international application. Crucially, it does not grant an "international patent" (no such thing exists). Each national patent office retains sovereign authority to examine and grant or refuse the patent under its own law. The PCT streamlines the initial filing and search process, deferring the cost and complexity of national filings for up to 30 months.

Legal Foundation

Article 3, Patent Cooperation Treaty (PCT), 1970 : applications for protection of inventions in contracting states may be filed as international applications under the Treaty

Article 22, PCT, 1970 : the applicant must furnish a copy of the international application to designated offices within 30 months from the priority date (national phase entry)

Filing (international) | ISR (search report) | Streamlined process | National phase | Each country decides

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Filing (international)

The applicant files a single international patent application with a Receiving Office (typically the home country's patent office or WIPO directly). The application automatically designates all PCT member states (currently 157 contracting states). India is a PCT member since 1998 and the Indian Patent Office serves as both Receiving Office and International Searching Authority (ISA).

ISR (search report)

An International Searching Authority conducts a prior art search and issues an International Search Report (ISR) identifying relevant prior art. This search is shared with all designated countries, eliminating duplicative searching. An optional International Preliminary Examination gives a non-binding opinion on patentability (novelty, inventive step, industrial applicability).

Streamlined process

The PCT saves time and cost in the initial phase. Instead of filing separate applications in 20 countries simultaneously (20 translations, 20 fees, 20 agents), the applicant files one application in one language and has 30 months to decide which countries to enter. This defers major expenditure until the applicant has the ISR indicating the invention's likely patentability.

National phase

Within 30 months from the priority date, the applicant must "enter the national phase" in each country where protection is desired. This means filing with each national office, paying national fees, providing translations, and appointing local agents. National phase entry is mandatory: the PCT international phase does not substitute for national examination.

Each country decides

Each national patent office examines the application independently under its own law and grants or refuses the patent. The ISR is advisory, not binding. A patent may be granted in the US but refused in India for the same invention, because each country applies its own patentability standards (India's Section 3 exclusions differ from US law).

F. Hoffmann-La Roche Ltd v Cipla Ltd (Delhi High Court, 2008)

Facts

Roche held a patent for erlotinib (cancer drug Tarceva), originally filed through the PCT route. Cipla launched a generic version in India. Roche sought interim injunction for patent infringement.

Held

The Court initially denied interim injunction, holding that in pharmaceutical patent cases, public interest (access to life-saving drugs) must be weighed against patent monopoly. The case proceeded to trial on merits.

Principle

PCT filing establishes the international application and priority date, but enforcement depends entirely on the national patent granted in the country of infringement. PCT provides the filing route; national law determines the substantive rights.

Novartis AG v Union of India (Supreme Court of India, 2013)

Facts

Novartis filed its imatinib mesylate patent application through the international route (claiming Swiss priority). The national phase application in India was refused under Section 3(d).

Held

International filing (PCT or convention priority) does not override national patentability standards. India's Section 3(d) applies regardless of the filing route. Each country examines under its own law.

Principle

The PCT streamlines filing but does not harmonise substantive patent law. National examination remains sovereign, and national exclusions (Section 3(d)) apply to all applications regardless of filing route.

PCT as a Filing Highway, Not a Granting Authority

The PCT provides procedural efficiency (one filing, one search, 30-month deferral) without substantive harmonisation. There is no "international patent." India's membership since 1998 enables Indian inventors to access 157 jurisdictions through a single initial filing while preserving India's sovereign right to apply its own patentability standards during national phase examination.

Intellectual Property Law | Unit 3 | Part A

Copyright Law — Short Notes

Q1. Write a short note on Author's Special Rights (Moral Rights).

PRIORITY: ★★★ | PART: A | FREQ: 5

Personal Inalienable Rights Protecting the Author's Dignity and Reputation

Moral rights under Section 57 of the Copyright Act, 1957 are personal, inalienable rights of the author that exist independently of economic rights and survive even after assignment of copyright. Unlike economic rights (Section 14) which can be transferred for commercial exploitation, moral rights remain with the author perpetually and cannot be waived, assigned, or extinguished by contract. They reflect the personality theory of intellectual property: the work is an extension of the author's identity.

Legal Foundation

Section 57, Copyright Act (CA), 1957 : independently of copyright, the author of a work has the right to claim authorship and to restrain distortion, mutilation, or modification prejudicial to honour or reputation

Article 6bis, Berne Convention for the Protection of Literary and Artistic Works, 1886 : requires member states to protect moral rights of paternity and integrity independently of economic rights

Mnemonic: "PIASD"

Paternity | Integrity | Inalienable | Survive assignment | Death (post-mortem)

Paternity | Integrity | Inalienable | Survive assignment | Death (post-mortem)

Paternity

The right of paternity (Section 57(1)(a)) is the author's right to claim authorship of the work and to have their name associated with it. No person may publish or exploit the work without attributing it to the author. If a publisher issues a novel without naming the author, or credits it to another person, the true author can seek injunction and damages for violation of paternity.

Integrity

The right of integrity (Section 57(1)(b)) is the author's right to restrain, or claim damages for, any distortion, mutilation, modification, or other act in relation to the work which would be prejudicial to the author's honour or reputation. In *Amar Nath Sehgal v Union of India* (2005), the Delhi High Court held that destruction of a government-commissioned mural violated the sculptor's moral right of integrity.

Inalienable

Moral rights cannot be assigned, licensed, or waived. Even if the author enters a contract purporting to surrender moral rights, the surrender is void. The 2012 Amendment to the Copyright Act clarified that moral rights subsist even if the author has previously parted with copyright. This distinguishes moral rights from economic rights which are freely transferable.

Survive assignment

When an author assigns copyright (economic rights) to a publisher, producer, or any third party, moral rights remain with the author. In *Mannu Bhandari v Kala Vikas Pictures* (1987), the Delhi High Court held that an author who assigned film adaptation rights retained the moral right to object to distortion of the novel in the film version.

Death (post-mortem)


After the author's death, moral rights are exercisable by the legal representative (Section 57(2)). The legal representative can enforce both paternity and integrity rights on behalf of the deceased author. This ensures that posthumous exploitation of a work cannot disfigure the author's legacy without accountability.

Amar Nath Sehgal v Union of India (Delhi High Court, 2005) Facts

Sculptor Amar Nath Sehgal created a large bronze mural for Vigyan Bhavan in the 1950s. In 1979, the government removed and stored it in a warehouse where it was damaged. Sehgal sued for violation of moral rights decades later.

 Held

The government violated Sehgal's moral right of integrity under Section 57. The destruction and mutilation of the artwork was prejudicial to the artist's honour and reputation. Rs 5 lakh damages awarded and remnants returned to the sculptor.

 Principle


Moral rights subsist independently of physical ownership. Even when the government owns the building and the mural's physical form, the artist's right of integrity protects against destruction or mutilation.

Mannu Bhandari v Kala Vikas Pictures (Delhi High Court, 1987) Facts

Hindi novelist Mannu Bhandari assigned film adaptation rights for her novel "Aap Ka Bunty." The film producer made substantial changes to the storyline. Bhandari sued for violation of her moral right of integrity.

 Held

The author retains moral right of integrity even after assigning adaptation rights. Reasonable adaptation for medium change is inherent in film-making, but distortion that prejudices the author's honour or reputation is actionable.

 Principle

Assignment of economic rights does not extinguish moral rights. The test is whether the adaptation crosses the line from reasonable creative change to prejudicial distortion of the author's reputation.

Moral Rights as the Author's Permanent Shield Against Exploitation

Section 57 ensures that the personal bond between author and work survives all commercial transactions. Even after the work generates revenue for others, the author's dignity (paternity) and reputation (integrity) remain legally protected, reflecting India's compliance with Berne Convention Article 6bis.

Q2. Write a short note on Infringement of Copyright.

PRIORITY: ★★★ | PART: A | FREQ: 3

Unauthorised Exercise of the Copyright Owner's Exclusive Rights

Copyright is infringed under Section 51 of the Copyright Act, 1957 when any person, without the licence of the copyright owner or the Registrar of Copyrights, does any act that the owner has the exclusive right to do under Section 14: reproduction, communication to the public, adaptation, translation, or making copies for sale or distribution. The test for infringement is substantial copying, which is qualitative rather than merely quantitative.

Legal Foundation

Section 51, Copyright Act (CA), 1957 : defines infringement as doing without authorisation any act the exclusive right to which is conferred on the copyright owner under Section 14

Section 52, Copyright Act, 1957 : enumerates acts that do not constitute infringement (fair dealing for private use, research, criticism, education, and backup copies)

Substantial copying | Section 51 acts | Primary vs secondary | Fair dealing exceptions | Remedies

Substantial copying

The test is whether a substantial part of the original work has been copied. "Substantial" is qualitative, not merely quantitative: copying a small but important part (the climax of a novel, the hook of a song, the core algorithm) can constitute substantial copying even if the copied portion is a small percentage of the whole. In *R.G. Anand v Delux Films (1978)*, the Supreme Court of India (SCI) laid down a seven-point test including that totality of comparison matters.

Section 51 acts

Section 51 identifies three categories of infringing acts: (i) doing any act the exclusive right to which is conferred on the owner (Section 51(a)(i)); (ii) permitting for profit any place to be used for infringing communication (Section 51(a)(ii)); (iii) making or importing infringing copies for sale, hire, distribution, or exhibition (Section 51(b)). Each category operates independently.

Primary vs secondary

Primary infringement involves the direct act of copying, performing, or communicating without authorisation. Secondary infringement involves dealing in infringing copies: importing, selling, hiring, distributing, or exhibiting copies known or reasonably believed to be infringing. Knowledge or reason to believe is a necessary element for secondary infringement.

Fair dealing exceptions

Section 52 provides an exhaustive list of non-infringing acts: fair dealing for private use, research, criticism, review, and reporting current events (Section 52(1)(a)); reproduction for educational purposes (Section 52(1)(i)); backup copies of computer programmes (Section 52(1)(aa)). All exceptions must satisfy the Berne three-step test.

Remedies


Three categories of remedies are available: civil (injunction, damages or account of profits, delivery of infringing copies, Anton Piller order under Section 55); criminal (Section 63: imprisonment 6 months to 3 years, fine Rs 50,000 to Rs 2 lakh); administrative (customs seizure of infringing imports under border measures).

R.G. Anand v Delux Films (Supreme Court of India, 1978) Facts

A playwright alleged that a film was based on his play without permission. The film had a similar theme (arranged marriage conflicts) but different treatment, dialogue, and characters.

 Held

The SCI held no infringement occurred. Copyright protects expression, not ideas. The seven-point test requires examining the totality of comparison; broad dissimilarity negates infringement even with similarity in subsidiary details.

 Principle

The idea-expression dichotomy is the gateway: no copyright in ideas, themes, or plots. The test is whether the reader or viewer gets an unmistakable impression that the defendant's work is a copy.

University of Oxford v Rameshwari Photocopy Services (Delhi High Court, 2016) Facts

A photocopy shop near Delhi University prepared course packs (compilations of photocopied chapters) for students. Oxford University Press and Cambridge University Press sued for copyright infringement.

 Held

Preparation of course packs for educational purposes falls within the exception under Section 52(1)(i) ("reproduction by a teacher or pupil in the course of instruction"). The educational exception applies even when a commercial intermediary is involved.

 Principle

Section 52(1)(i) provides a broad educational exception. The purpose (instruction) determines the exception, not the commercial character of the intermediary.

Infringement as the Boundary Between Exclusive Rights and Public Access

Section 51 defines the copyright owner's enforceable boundary, while Section 52 carves out the public's legitimate access. The substantial copying test (R.G. Anand, 1978) and fair dealing exceptions (DU Photocopy Case, 2016) together calibrate this boundary between creator monopoly and public interest.

Q3. Write a short note on Neighbouring Rights.

PRIORITY: ★★★ | PART: A | FREQ: 3

Rights of Performers, Broadcasters, and Producers Beyond Copyright

Neighbouring rights (also called related rights) are intellectual property rights granted to persons who do not create original works but who contribute to their dissemination and communication to the public. Under the Copyright Act, 1957, neighbouring rights protect three categories: performers (actors, singers, musicians, dancers), broadcasting organisations (TV and radio channels), and producers of sound recordings. These rights exist independently of and in addition to the copyright in the underlying work.

Legal Foundation

Section 38, Copyright Act (CA), 1957 : performers' rights: the performer has the right to make sound recording or visual recording of the performance, reproduce it, broadcast it, and communicate it to the public

Section 37, Copyright Act, 1957 : broadcasting reproduction right: broadcasting organisations have exclusive right to re-broadcast, record, reproduce, and communicate to the public their broadcasts

Performers | Broadcasters | Reproduction right | Independent of copyright | Duration

Performers

Section 38 (as amended in 2012) grants performers exclusive rights in their performances: the right to make sound or visual recordings, reproduce such recordings, broadcast or communicate the performance to the public, and sell or commercially rent copies. "Performer" includes actors, singers, musicians, dancers, acrobats, and any person who delivers a lecture (Section 2(qq)). The performer's consent is required for recording a live performance.

Broadcasters

Section 37 grants broadcasting organisations the exclusive right to re-broadcast their broadcasts, make sound or visual recordings, reproduce such recordings, and communicate the broadcast to the public. This protects the organisational and financial investment in creating a broadcast signal, independent of any copyright in the underlying content.

Reproduction right

Both performers and broadcasters have the right to prevent unauthorised reproduction of their recorded performances and broadcasts. A person who records a live concert without the performer's permission, or who re-broadcasts a TV channel's telecast, infringes neighbouring rights regardless of whether the underlying copyright in the song or programme is also infringed.

Independent of copyright

Neighbouring rights exist alongside and independently of the copyright in the underlying work. A song has copyright (held by the lyricist and composer). The singer's performance of the song attracts a separate performer's right. The radio station's broadcast of the song attracts a separate broadcasting right. Three distinct rights can coexist in the same transmitted content.

Duration


Performers' rights subsist for 50 years from the year of performance (Section 38(4), as amended 2012). Broadcasting reproduction rights subsist for 25 years from the year of the broadcast (Section 37(2)). Both are shorter than the standard copyright term (life plus 60 years), reflecting the derivative nature of neighbouring rights.

Super Cassettes Industries Ltd v Bathla Cassette Industries (Delhi High Court, 2003) Facts

Super Cassettes alleged that Bathla reproduced sound recordings without authorisation. The issue was whether the producer of a sound recording has independent rights separate from the underlying musical work's copyright.

 Held

The producer of a sound recording has copyright in the recording (Section 14(e)) which is independent of any copyright in the underlying literary, dramatic, or musical work. Reproducing the recording without the producer's consent is infringement regardless of any licence from the music composer.

 Principle

Copyright in a sound recording (neighbouring right of the producer) is independent of copyright in the underlying composition. Both require separate licences for lawful use.

Indian Performing Rights Society v Eastern India Motion Pictures Association (Supreme Court of India, 1977) Facts

IPRS claimed royalties for public performance of songs incorporated in films. The film producers argued that once a song is incorporated into a film, the film producer's copyright absorbs all underlying rights.

 Held

The SCI held that once a musical work is incorporated into a cinematograph film, the copyright in the film (Section 14(d)) subsumes the right of performance of the musical work within the film. The composer's separate right to royalties for film exhibition was extinguished.

 Principle

Cinematograph film copyright (Section 14(d)) absorbs the performance rights of underlying musical works incorporated in the film. Neighbouring rights of performers in the film context vest in the producer.

Neighbouring Rights as the Economic Shield for Creative Disseminators

Neighbouring rights recognise that performers, broadcasters, and producers invest skill, labour, and capital in bringing creative works to the public. Sections 37 and 38 protect this investment independently of the underlying copyright, ensuring that intermediaries who communicate and disseminate works receive enforceable IP protection.

Q4. Write a short note on Copyright in Design.

PRIORITY: ★★★ | PART: A | FREQ: 3

The Interface Between Copyright and Design Registration

The relationship between copyright and industrial design is governed by Section 15 of the Copyright Act, 1957 which establishes a critical rule: if a design is registrable under the Designs Act, 2000, copyright does not subsist in that design once it has been applied industrially (reproduced more than 50 times). This prevents dual monopoly (copyright lasting life plus 60 years overlapping with design protection of 15 years) and channels aesthetic industrial creations into the appropriate statutory regime.

Legal Foundation

Section 15(2), Copyright Act (CA), 1957 : copyright shall not subsist in any design which is capable of being registered under the Designs Act, 2000 but which has not been so registered, once the design has been applied industrially (more than 50 times by the owner)

Section 2(d), Designs Act (DA), 2000 : defines "design" as features of shape, configuration, pattern, ornament, or composition of lines or colours applied to any article, which appeal to and are judged solely by the eye

Mnemonic: "RACID"

Registrable design | Applied industrially | Copyright ceases | Interface rule | Dual protection barred

Registrable design | Applied industrially | Copyright ceases | Interface rule | Dual protection barred

Registrable design

A "design" under Section 2(d) of the Designs Act means features of shape, configuration, pattern, ornament, or composition of lines or colours applied to an article by any industrial process which are judged solely by the eye. If an artistic work (painting, sculpture, drawing) is capable of being used as a design applied to an industrial article, it becomes "registrable" under the Designs Act.

Applied industrially

The threshold is reproduction more than 50 times by or with the licence of the copyright owner. Below this threshold, the artistic work retains copyright protection. Above it, the work is deemed to have been "applied industrially" and the copyright interface rule in Section 15(2) is triggered.

Copyright ceases

Under Section 15(2), once a registrable design has been applied industrially more than 50 times without being registered under the Designs Act, copyright ceases to subsist in that design. The creator loses copyright protection. This is a forfeiture provision: the failure to register a registrable design, coupled with industrial application, extinguishes copyright.

Interface rule

Section 15(1) provides that copyright subsists in a registered design to the extent provided by the Designs Act only. If the design is registered, it is protected under the Designs Act (10 plus 5 years) and not under copyright (which would give life plus 60 years). This prevents the creator from enjoying extended copyright monopoly over an essentially industrial design.

Dual protection barred


The policy is clear: one creation cannot enjoy both copyright protection (life plus 60) and design protection (15 years) simultaneously. The creator must choose the appropriate regime. If the work is artistic (painting, sculpture, engraving not applied to industry), copyright protects it. If it is a design applied to articles of manufacture, the Designs Act is the proper route.

Microfibres Inc v Girdhar & Co (Delhi High Court, 2009) Facts

Microfibres created original fabric designs (patterns for upholstery). These designs were applied to industrial production. The company claimed copyright protection for the designs without registering them under the Designs Act.

 Held

The Court held that Section 15(2) applies: since the designs were capable of registration under the Designs Act and had been applied industrially more than 50 times without registration, copyright ceased to subsist. The proper route for protection was the Designs Act.

 Principle


Failure to register a registrable design that has been applied industrially more than 50 times results in forfeiture of copyright. Section 15(2) channels industrial designs into the Designs Act regime.

Rajesh Masrani v Tahiliani Design (Delhi High Court, 2009) Facts

A fashion designer claimed copyright in garment designs (artistic works). The question was whether fashion designs applied to clothing articles attract copyright or must be registered as industrial designs.

 Held

The Court distinguished between purely artistic works and designs applied to articles of manufacture. If the design is applied industrially to articles (garments produced in quantity), Section 15(2) requires registration under the Designs Act for continued protection.

 Principle

The copyright-design interface is determined by industrial application. Fashion designs produced in quantity are governed by the Designs Act; one-off artistic creations retain copyright.

Section 15 as the Gateway Between Copyright and Design Protection

The copyright-design interface under Section 15 ensures that industrial designs are channelled into the Designs Act's shorter, registration-dependent regime rather than enjoying the extended monopoly of copyright. The 50-application threshold is the trigger point, and failure to register results in the harsh consequence of copyright forfeiture.

Q5. Write a short note on Anton Piller Order.

PRIORITY: ★★★ | PART: A | FREQ: 2

The Ex Parte Search and Seizure Order Preserving Evidence in IP Cases

An Anton Piller order is an exceptional ex parte civil remedy in intellectual property cases, permitting the rights holder to enter the infringer's premises, search for, and seize infringing copies and documents before they can be destroyed. Named after the English case *Anton Piller KG v Manufacturing Processes Ltd* (1976, UK Court of Appeal), it is the court's response to the real risk that infringers will destroy evidence if given advance notice of proceedings.

Legal Foundation

Section 55, Copyright Act (CA), 1957 : civil remedies for infringement including injunction, damages, and delivery of infringing copies

Article 50, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994 : requires members to provide judicial authorities the power to order prompt and effective provisional measures, including ex parte measures where delay would cause irreparable harm

Ex parte | Strong prima facie case | Possession of infringing material | Risk of destruction | Damages (serious potential)

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Ex parte

The order is granted without notice to the defendant (*ex parte*). This is its defining characteristic and the reason it is considered exceptional: it bypasses the fundamental principle of natural justice (*audi alteram partem*) because the very purpose of the order would be defeated if the defendant knew in advance. Courts exercise extreme caution before granting such orders.

Strong prima facie case

The applicant must demonstrate an extremely strong prima facie case of infringement. A mere allegation is insufficient. The court must be satisfied, on the material presented, that the applicant is very likely to succeed at trial. This is a higher threshold than the standard for ordinary interim injunctions.

Possession of infringing material

There must be clear evidence that the defendant has infringing copies, documents, or materials in their possession or on their premises. Speculative belief is not enough. The applicant must provide specific evidence (such as investigator reports, sample purchases, or intelligence) demonstrating that the defendant is in possession of the offending material.

Risk of destruction

There must be a real possibility that the defendant will destroy or conceal the infringing material if given notice of proceedings. This is the justification for the *ex parte* nature: if destruction is not a real risk, the court will not bypass natural justice. Evidence of the defendant's previous conduct, the nature of the infringement (e.g., pirated software easily deleted), or the defendant's known character may establish this risk.

Damages (serious potential)

The applicant must demonstrate that they will suffer serious actual or potential damage if the order is not granted. Trivial infringement or minimal commercial harm does not justify the extraordinary measure of entering premises without notice. The damage must be proportionate to the invasion of the defendant's rights.

Anton Piller KG v Manufacturing Processes Ltd (Court of Appeal, England, 1976)

Facts

Anton Piller, a German manufacturer of electric motors, discovered that its UK agent was leaking confidential drawings and information to competitors. There was a real risk that the agent would destroy the documents if served with proceedings.

Held

The Court of Appeal granted an order permitting Anton Piller to enter the agent's premises, inspect, and remove documents. The order was justified by the strong case, the clear possession of confidential material, and the real risk of destruction.

Principle

Courts have inherent jurisdiction to grant search and seizure orders to preserve evidence where there is a strong case, clear possession, and real risk of destruction. This order has since been adopted globally in IP litigation.

Microsoft Corporation v Yogesh Papat (Bombay High Court, 2005)

Facts

Microsoft obtained an Anton Piller order against dealers suspected of selling computers pre-loaded with pirated Microsoft software. Investigators accompanied by court officers entered premises and seized computers containing infringing copies.

Held

The Court upheld the Anton Piller order, finding all four conditions satisfied: strong prima facie case (pirated software found on sample purchases), serious damage (mass piracy undermining licence revenue), clear possession (pre-loaded computers), and risk of destruction (software easily deleted).

Principle

Anton Piller orders are regularly granted in Indian software piracy cases. The ease with which digital evidence can be destroyed heightens the justification for ex parte search and seizure.

Anton Piller as an Extraordinary Preservation Remedy, Not a Punitive Tool

The Anton Piller order is a preservation measure, not a final determination of infringement. Its purpose is evidentiary: to prevent destruction of proof. Courts in India, following TRIPS Article 50, grant these orders sparingly and require strict compliance with the four conditions to protect against abuse of the ex parte process.

Intellectual Property Law | Unit 4 | Part A

Trademarks and Designs – Short Notes

Q1. Write a short note on Passing Off.

PRIORITY: ★★★ | PART: A | FREQ: 4

The Common Law Action Protecting Unregistered Trademarks Through Goodwill

Passing off is a common law tort action available to the owner of an unregistered trademark to prevent another person from misrepresenting their goods or services as those of the owner. It is expressly preserved by Section 27(2) of the Trade Marks Act (TMA), 1999, which provides that nothing in the Act shall affect the right of any person to take action for passing off. Unlike statutory infringement (Section 29) which requires a registered trademark, passing off protects the broader commercial identity: goodwill, trade dress, get-up, and overall presentation.

Legal Foundation

Section 27(2), Trade Marks Act (TMA), 1999 : preserves the common law right to bring an action for passing off independently of statutory trademark registration

Section 134, Trade Marks Act, 1999 : district courts have jurisdiction to try suits for passing off alongside infringement claims

Mnemonic: "GMDTE"

Goodwill | Misrepresentation | Damage | Transborder reputation | Elements compared broadly

Goodwill | Misrepresentation | Damage | Transborder reputation | Elements compared broadly

Goodwill

The claimant must prove that the mark, get-up, or trade dress has acquired goodwill and is associated in the public's mind with the claimant's goods or services. Goodwill is the attractive force that brings in custom. It can be established through long use, advertising expenditure, sales volume, and consumer recognition. Without established goodwill, the action fails at the threshold.

Misrepresentation

The defendant must have made a misrepresentation (express or implied) leading or likely to lead the public to believe that the defendant's goods are those of the claimant, or are connected with the claimant. The misrepresentation need not be intentional: the test is the likely effect on the public, not the defendant's state of mind. Adopting a similar name, logo, or packaging suffices.

Damage

The claimant must show actual damage or likelihood of damage: loss of sales to the defendant, dilution of the mark's distinctiveness, or loss of licensing opportunities. Damage need not be quantified precisely at the interim stage: likely future damage suffices for injunctive relief. All three elements (goodwill, misrepresentation, damage) must be established cumulatively.

Transborder reputation

In *N.R. Dongre v Whirlpool Corporation* (1996), the Supreme Court of India (SCI) held that transborder reputation is sufficient for passing off in India. A foreign company with no Indian registration or commercial presence can maintain passing off if its goodwill has reached India through international media, advertising, and NRI exposure. Physical presence in India is not required.

Elements compared broadly

Unlike infringement which compares marks only, passing off compares the entire commercial impression: marks, get-up, packaging, colour scheme, trade dress, presentation style, and overall look. This broader comparison means passing off can succeed where infringement fails, particularly where the deception arises from overall similarity rather than mark-to-mark identity.

N.R. Dongre v Whirlpool Corporation (Supreme Court of India, 1996)

Facts

Whirlpool, a US company, had transborder reputation in India through international advertising and media. It had not used the mark commercially in India. An Indian entity registered and used "Whirlpool" for washing machines.

Held

The SCI held that passing off protects goodwill, not registration. Whirlpool had acquired goodwill in India through transborder reputation. The Indian entity's use constituted passing off.

Principle

Transborder reputation is sufficient for passing off. Physical commercial presence in India is not required where goodwill has reached India through international exposure.

Laxmikant V. Patel v Chetanbhai Shah (Supreme Court of India, 2002)

Facts

The defendant adopted the trading name "Amar Colour Lab" similar to the plaintiff's long-established "Laxmi Colour Lab." The plaintiff had not registered the name as a trademark.

Held

The SCI held that passing off applies to trade names and business names, not just product marks. If a business name has acquired goodwill, use of a confusingly similar name by a competitor constitutes passing off.

Principle

Passing off protects business names and trade names in addition to product trademarks. The action extends to any indicator of commercial origin that has acquired goodwill.

Passing Off as the Equity-Based Complement to Statutory Trademark Protection

Passing off ensures that commercial reputation and goodwill receive legal protection regardless of registration status. The classical trinity (goodwill, misrepresentation, damage) operates as a flexible common law remedy that covers situations beyond the reach of Section 29, making it indispensable for owners of unregistered marks.

Q2. Write a short note on Well-Known Trademarks.

PRIORITY: ★★★ | PART: A | FREQ: 4

Marks Receiving Enhanced Cross-Class Protection Based on Public Recognition

A well-known trademark under Section 2(1)(zg) of the Trade Marks Act (TMA), 1999 is a mark which has become so well-known to a substantial segment of the public using or dealing in relevant goods or services that the use of such mark in relation to other goods or services would be taken as indicating a connection with the owner. Well-known trademarks receive protection beyond their registered class: they are protected even against use on dissimilar goods where such use would take unfair advantage of or be detrimental to the mark's distinctive character.

Legal Foundation

Section 2(1)(zg), Trade Marks Act (TMA), 1999 : defines "well-known trade mark" as one known to a substantial segment of the public such that use on other goods would indicate a connection with the owner

Section 11(2), Trade Marks Act, 1999 : a mark conflicting with a well-known trademark shall be refused registration even for dissimilar goods if use would take unfair advantage or be detrimental to distinctive character or repute

Mnemonic: "SCDRU"

Substantial segment | Cross-class protection | Dilution prevention | Reputation factors | Unfair advantage bar

Substantial segment | Cross-class protection | Dilution prevention | Reputation factors | Unfair advantage bar

Substantial segment

The mark must be known to a "substantial segment of the public" using or dealing in the relevant goods or services. It need not be universally known: Section 11(6) provides that the Registrar shall consider the knowledge of the mark in the relevant section of the public, including knowledge through advertising, promotion, and publicity. Marks like TATA, RELIANCE, NIKE, and APPLE qualify.

Cross-class protection

Section 11(2) provides that a mark shall not be registered if identical or similar to a well-known mark even for dissimilar goods. This overrides the normal principle that trademark protection is limited to registered classes. Similarly, Section 29(4) treats use of a mark similar to a well-known registered mark on dissimilar goods as infringement if it exploits or damages the mark's repute.

Dilution prevention

The rationale for cross-class protection is preventing dilution: the gradual erosion of a famous mark's distinctiveness through unauthorised use on unrelated products. Even without consumer confusion about source, the mark's unique association with the owner is weakened when others use it freely. Well-known mark protection addresses this "tarnishment" and "blurring."

Reputation factors

Section 11(6) to (9) lists factors the Registrar must consider: knowledge of the mark in the relevant sector; duration, extent, and geographical area of use; duration, extent, and geographical area of promotion; duration and geographical area of any registrations; record of successful enforcement; and number of persons trading under the mark.

Unfair advantage bar


Even if there is no likelihood of confusion (because the goods are dissimilar), registration is refused and infringement is established if the later mark takes "unfair advantage" of the well-known mark's reputation. Using "TATA" for a tea shop exploits Tata Group's goodwill even if no consumer believes Tata Group operates tea shops.

Daimler Benz Aktiengesellschaft v Hybo Hindustan (Delhi High Court, 1994) Facts

Hybo Hindustan used the "Mercedes" name and a three-pointed star logo on undergarments. Daimler Benz (owner of the Mercedes automobile brand) objected despite the goods being entirely dissimilar.

 Held

The Court granted injunction in favour of Daimler Benz. "Mercedes" and its three-pointed star are well-known marks. Use on undergarments takes unfair advantage of the mark's prestige and potentially tarnishes its luxury image.

 Principle


Well-known marks are protected across all goods categories. Use on dissimilar goods that tarnishes or dilutes the mark's prestige constitutes infringement regardless of absence of consumer confusion about source.

ITC Ltd v Philip Morris Products (Calcutta High Court, 2010) Facts

ITC claimed that Philip Morris's "MARLBORO" packaging design for cigarettes was similar to ITC's packaging. Both brands were well-known in their respective markets.

 Held

The Court examined well-known mark factors: duration and extent of use, advertising expenditure, consumer survey evidence, and geographical spread. Both marks qualified as well-known, requiring careful analysis of confusion likelihood and dilution.

 Principle

Well-known mark status is determined by multiple statutory factors (Section 11(6) to (9)). The Registrar and courts conduct a multi-factor assessment rather than relying on subjective fame.

Well-Known Marks as the Shield Against Cross-Category Free-Riding

The well-known trademark doctrine under Sections 2(1)(zg), 11(2), and 29(4) of the TMA extends protection beyond registered classes to prevent dilution, tarnishment, and unfair exploitation of marks that have achieved significant public recognition, ensuring that brand equity built through years of investment is not appropriated by unrelated traders.

Q3. Write a short note on Domain Names.

PRIORITY: ★★★ | PART: A | FREQ: 2

Internet Addresses Attracting Trademark Law Protection Against Cybersquatting

A domain name is an internet address (such as tata.com or flipkart.in) that identifies a website and functions as a commercial identifier for online businesses. When a domain name incorporates a trademark, it serves the same origin-identification function as a traditional mark. In *Satyam Infoway Ltd v Sifynet Solutions Pvt Ltd* (2004), the Supreme Court of India (SCI) held that domain names are entitled to trademark protection and the principles of passing off apply to domain name disputes.

Legal Foundation

Section 29, Trade Marks Act (TMA), 1999 : use of a mark includes use in advertising and business papers, which extends to internet use and domain names by judicial interpretation

Uniform Domain-Name Dispute-Resolution Policy (UDRP), 1999 : WIPO-administered policy providing an administrative procedure for resolving domain name disputes involving trademarks

Cybersquatting | UDRP three-part test | Bad faith | Resolution mechanisms | Domain as TM

Cybersquatting

Cybersquatting is the practice of registering a domain name identical or confusingly similar to a famous trademark, with the intention of selling it to the trademark owner at an inflated price or diverting the owner's customers. It exploits the first-come-first-served nature of domain registration, allowing bad faith actors to appropriate established brand names as internet addresses before the trademark owners register them.

UDRP three-part test

Under WIPO's Uniform Domain-Name Dispute-Resolution Policy, the complainant must prove three elements: (i) the domain name is identical or confusingly similar to the complainant's trademark, (ii) the registrant has no rights or legitimate interests in respect of the domain name, and (iii) the domain name has been registered and is being used in bad faith. All three elements must be satisfied.

Bad faith

Bad faith indicators include: registering the domain to sell it to the trademark owner at an inflated price, registering to prevent the trademark owner from reflecting the mark in a domain, registering to disrupt a competitor's business, and using the domain to attract internet users for commercial gain by creating confusion with the trademark. The UDRP specifies these as non-exhaustive examples.

Resolution mechanisms

Three mechanisms address domain name disputes: (i) WIPO UDRP for international generic top-level domains (.com, .net, .org): administrative panel decides within 45 days, can order transfer or cancellation; (ii) INDRP (.IN Domain Dispute Resolution Policy) for Indian .in domains, administered by the National Internet Exchange of India (NIXI); (iii) civil suit for passing off or trademark infringement before Indian courts.

Domain as TM

The SCI in Satyam Infoway (2004) held that domain names are not merely internet addresses but function as trademarks identifying the source of services. Consequently, all principles of trademark law (distinctiveness, deceptive similarity, passing off, infringement) apply. A domain name can itself be registered as a trademark if it meets distinctiveness requirements.

Satyam Infoway Ltd v Sifynet Solutions Pvt Ltd (Supreme Court of India, 2004)

Facts

Both companies operated internet services. Satyam used "Sify" as its brand for internet cafes and services. Sifynet registered a similar domain name. Satyam sued for passing off.

Held

The SCI held that domain names serve the same function as trademarks: identifying the source of services. The principles of passing off (goodwill, misrepresentation, damage) apply to domain name disputes. Use of a similar domain name to divert business constitutes passing off.

Principle

Domain names are protectable under trademark law. Passing off applies to domain name disputes where the domain identifies a commercial source and creates confusion.

Yahoo Inc v Akash Arora (Delhi High Court, 1999)

Facts

Akash Arora registered the domain name "yahooindia.com" and operated a website offering services similar to Yahoo. Yahoo Inc sought injunction.

Held

The Court granted injunction holding that "yahooindia.com" is deceptively similar to "yahoo.com." The use of a well-known international trademark as a domain name with a geographic suffix constitutes passing off. Internet users are likely to be confused.

Principle

Adding a geographic suffix to a well-known trademark does not avoid confusion. Domain name piracy of famous marks is actionable as passing off even in the absence of specific domain name legislation.

Domain Names at the Intersection of Technology and Trademark Law

Domain name disputes illustrate how trademark principles adapt to digital commerce. The convergence of UDRP (international), INDRP (Indian), and civil court jurisdiction (Satyam Infoway, Yahoo v Arora) ensures that trademark owners have effective remedies against cybersquatting across all domain registries.

Q4. Write a short note on Deceptive Similarity.

PRIORITY: ★★★ | PART: A | FREQ: 3

The Legal Test for Confusing Resemblance Between Trademarks

Deceptive similarity under Section 2(1)(h) of the Trade Marks Act (TMA), 1999 means a mark which so nearly resembles another mark as is likely to deceive or cause confusion. The test is applied from the perspective of a person of average intelligence and imperfect recollection, comparing marks as wholes rather than dissecting them into components. It is the central concept in both infringement (Section 29) and opposition (Section 11) proceedings.

Legal Foundation

Section 2(1)(h), Trade Marks Act (TMA), 1999 : defines "deceptively similar" as a mark so nearly resembling another as to be likely to deceive or cause confusion

Section 29(2), Trade Marks Act, 1999 : use of a similar mark on identical or similar goods is infringement if it is likely to cause confusion on the part of the public

Average intelligence | Imperfect recollection | Phonetic similarity | Overall impression | Trade channel context

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Average intelligence

The test consumer is a person of average intelligence, not an expert or an unusually careful buyer. Courts do not apply the standard of a trademark attorney or a specialist. The question is whether an ordinary consumer encountering the marks in the marketplace would be confused about the source of the goods.

Imperfect recollection

The consumer is assumed to have "imperfect recollection": they do not have both marks side by side for careful comparison. They carry a general impression of the earlier mark and encounter the later mark separately. This is why overall impression matters more than minute differences visible only on close comparison.

Phonetic similarity

How marks sound when spoken is critical, particularly for goods purchased orally (asking a shopkeeper by name). In *Amritdhara Pharmacy v Satya Deo Gupta* (1963), the SCI held that "Amritdhara" and "Lakshmandhara" were deceptively similar because the common suffix "dhara" dominated the phonetic impression. For pharmaceuticals purchased by verbal request, phonetic similarity is given heightened weight.

Overall impression

Marks are compared as wholes, not dissected syllable by syllable. The overall visual, phonetic, and conceptual impression determines similarity. Small differences in spelling or an additional prefix/suffix may be insufficient to distinguish marks if the dominant element creates the same impression. In *Cadila Healthcare v Cadila Pharmaceuticals* (2001), the SCI laid down a multi-factor test: nature of marks, degree of resemblance, nature of goods, similarity of trade channels, and degree of care by purchasers.

Trade channel context


The context of purchase matters: goods sold in similar trade channels to similar consumers face a stricter similarity test. Pharmaceuticals (*Cadila*, 2001) attract the strictest test because confusion can be life-threatening. Luxury goods sold only in exclusive stores to discerning buyers may attract a more lenient test because those consumers exercise greater care.

Amritdhara Pharmacy v Satya Deo Gupta (Supreme Court of India, 1963) Facts

"Amritdhara" (an ayurvedic medicinal preparation) was a registered trademark. The defendant marketed a similar preparation as "Lakshmandhara." The plaintiff alleged deceptive similarity.

 Held

The SCI held the marks deceptively similar. The common suffix "dhara" dominates both marks. A person of average intelligence with imperfect recollection, asking a shopkeeper for the medicine orally, would likely confuse the two.

 Principle


Phonetic similarity is decisive for orally purchased goods. Marks are compared by overall impression on a consumer of average intelligence and imperfect recollection.

Cadila Healthcare Ltd v Cadila Pharmaceuticals Ltd (Supreme Court of India, 2001) Facts

Two pharmaceutical companies: "Falcitab" (Cadila Healthcare) and "Falcigo" (Cadila Pharmaceuticals), both for malaria. The SCI examined deceptive similarity in pharmaceutical marks.

 Held

For pharmaceutical products, the test of deceptive similarity is stricter because confusion can endanger life. Multi-factor test: nature of marks, degree of resemblance (phonetic, visual, structural), nature of goods, similarity of trade channels, degree of care exercised by purchasers, mode of purchasing (oral or visual).

 Principle

Pharmaceutical trademarks demand a heightened test for deceptive similarity. The risk to public health from confusion justifies stricter scrutiny than for ordinary consumer goods.

Deceptive Similarity as the Gatekeeper of Trademark Disputes

Section 2(1)(h) provides the legal standard that determines both registration refusals and infringement findings. The Amritdhara (1963) and Cadila (2001) tests remain the governing framework, requiring courts to assess marks through the lens of an ordinary consumer with imperfect memory, with heightened vigilance for goods where confusion carries serious consequences.

Q5. Write a short note on Well-Known Trademarks and their protection under Indian law.

PRIORITY: ★★★ | PART: A | FREQ: 4

Certification Marks as Quality Assurance Indicators

A certification trade mark under Section 2(1)(e) of the Trade Marks Act (TMA), 1999 is a mark capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristics, from goods or services not so certified. Unlike ordinary trademarks used by the proprietor on their own goods, certification marks are used by authorised persons who meet the certification standards established by the proprietor.

Legal Foundation

Section 2(1)(e), Trade Marks Act (TMA), 1999 : defines "certification trade mark" as a mark certifying the origin, material, mode of manufacture, quality, accuracy, or other characteristics of goods or services

Section 69, Trade Marks Act, 1999 : special provisions for registration of certification trade marks including the requirement to file draft regulations governing use

Quality certified | Owner does not use | Permitted users | Uniform standards | Regulations filed

Quality certified

A certification mark certifies that the goods or services bearing the mark meet specific standards of quality, origin, material, or mode of manufacture. The ISI mark certifies compliance with Bureau of Indian Standards specifications. The AGMARK certifies agricultural produce quality. The FPO mark certifies fruit products compliance. These are not source indicators but quality assurance symbols.

Owner does not use

The defining feature of a certification mark is that the proprietor does not use it on their own goods or services (Section 69). The proprietor sets the standards and controls use, but authorised third parties who meet the standards actually apply the mark to their goods. This distinguishes it from an ordinary trademark where the owner uses the mark on their own products.

Permitted users

Any person whose goods or services meet the certification standards is entitled to use the mark. The proprietor cannot unreasonably refuse permission to any qualified user. This ensures the mark functions as a genuine quality indicator rather than an anticompetitive tool restricting market access.

Uniform standards

The standards certified must be uniform and objective: applied consistently to all users without discrimination. The proprietor must publish and maintain these standards. Products bearing the certification mark must all meet the same threshold, ensuring consumer reliance on the mark's quality signal.

Regulations filed

Section 69 requires the applicant for a certification mark to file draft regulations governing the mark's use: who may use it, what characteristics are certified, how compliance is tested, what happens on non-compliance, and how disputes are resolved. The Registrar examines these regulations before permitting registration.

The Tea Board of India (Certification Mark Holder)

Facts

The Tea Board of India holds the "Darjeeling" certification mark (in addition to the GI). The certification mark certifies that tea bearing the mark originates from the Darjeeling region and meets specific quality parameters.

Held

The Tea Board's certification mark operates alongside the GI: it certifies both origin and quality. Producers who meet the Board's standards are authorised to use the mark. Others are excluded.

Principle

Certification marks and GIs can coexist on the same product. The certification mark adds a quality assurance function (meeting Board standards) beyond the GI's origin indication function.

Woolmark Company v Dishman Pharmaceuticals (IPAB, 2012)

Facts

The Woolmark Company (proprietor of the Woolmark certification mark certifying wool quality) opposed registration of a similar mark by a third party.

Held

The Board upheld the Woolmark as a well-known certification mark. Its distinctive character and global recognition entitled it to broad protection against confusingly similar marks.

Principle

Certification marks can acquire well-known status and receive enhanced protection against deceptively similar marks, combining the certification function with the broader protections available to well-known marks.

Certification Marks as Consumer Trust Infrastructure

Certification marks serve a distinct function from ordinary trademarks: they guarantee quality or characteristics rather than identifying commercial source. Under Sections 2(1)(e) and 69 of the TMA, they operate as a regulated quality assurance system where the proprietor sets standards and third-party users apply the mark, creating public trust in certified compliance.

Intellectual Property Law | Unit 5 | Part A

Patents — Short Notes

Q1. Write a short note on Kinds of Patents.

PRIORITY: ★★★ | PART: A | FREQ: 4

Product Patents, Process Patents, and Patents of Addition

The Patents Act, 1970 recognises three kinds of patents distinguished by the subject matter they protect: product patents (protecting the product itself regardless of the manufacturing process), process patents (protecting a specific method of making a product), and patents of addition (protecting improvements to an already patented invention). India's shift from process-only patents to product patents for all fields (2005 Amendment) was the most consequential change in Indian patent law, driven by TRIPS Article 27.1 compliance.

Legal Foundation

Section 48, Patents Act, 1970 : defines the exclusive rights conferred by product patents (prevent making, using, selling, importing the product) and process patents (prevent using the process and making, using, selling products directly obtained)

Section 54, Patents Act, 1970 : provides for patents of addition for improvements or modifications of already patented inventions

Mnemonic: "PPADS"

Product patent | Process patent | Addition patent | Duration | Scope difference

Product patent | Process patent | Addition patent | Duration | Scope difference

Product patent

A product patent protects the product itself, regardless of the process used to manufacture it. Any person making the same product by any process (known or novel) infringes. This provides the broadest protection. Example: a patent on a new chemical compound (imatinib mesylate) prevents all manufacturers from producing that compound, however they synthesise it. India introduced product patents for all fields including pharmaceuticals through the 2005 Amendment.

Process patent

A process patent protects a specific method or process for manufacturing a product. Others can make the same product using a different process without infringement. This provides narrower protection. Example: a patent on a specific method of synthesising aspirin does not prevent others from making aspirin by alternative chemical routes. India had process-only patents for food, medicine, and chemicals from 1970 to 2005 (Patents Act, 1970 as originally enacted).

Addition patent

Section 54 provides for a patent of addition when a patentee discovers an improvement or modification of the invention already patented. The patent of addition does not require a separate inventive step (Section 56). Its term expires with the main patent. It cannot be made the subject of a compulsory licence independently. Example: an improved formulation of an already patented drug compound.

Duration

All patents have a uniform term of 20 years from the date of filing (Section 53, as amended in 2002). This applies equally to product and process patents. Patents of addition expire with the main patent regardless of their own filing date. The term is non-renewable: after 20 years, the invention enters the public domain.

Scope difference

The practical distinction is enforcement scope. A product patent holder can prevent anyone from making the product by any route (broad). A process patent holder can only prevent use of the specific patented process (narrow). Under the 1970 Act regime, Indian pharmaceutical companies exploited this by developing alternative processes to manufacture drugs patented (as products) abroad. After 2005, this strategy is no longer available for new patents.

Case Laws >

Novartis AG v Union of India (Supreme Court of India, 2013)

Facts

Novartis sought a product patent for the beta-crystalline form of imatinib mesylate. The application was filed during the transition from process-only to product patent regime. The question involved whether the new form qualified as a product patent under the post-2005 framework.

Held

The SCI refused the patent under Section 3(d). Even under the product patent regime, not every new form of a known substance qualifies. Enhanced efficacy must be demonstrated.

Principle

Product patent availability (post-2005) does not mean all products are patentable. Section 3 exclusions, particularly Section 3(d), still apply as gatekeepers.

Roche v Cipla (Delhi High Court, 2008)

Facts

Roche held a product patent for erlotinib (cancer drug Tarceva). Cipla manufactured a generic version using an allegedly different process. Roche sued for product patent infringement.

Held

The Court noted that under a product patent, the process used by the alleged infringer is irrelevant: making the same product by any process constitutes infringement. The case illustrated the broader enforcement scope of product patents compared to process patents.

Principle

Product patents prevent all manufacture of the patented product regardless of the process used. This is the key difference from process patents where alternative processes avoid infringement.

Kinds of Patents as Reflecting India's Policy Evolution

The three kinds of patents reflect India's evolving IP policy: the 1970 Act's process-only approach enabled generic pharmaceutical growth; the 2005 Amendment's product patent introduction fulfilled TRIPS obligations while Section 3(d) preserved policy space. Patents of addition under Section 54 accommodate incremental innovation within the existing patent framework.

Q2. Write a short note on Compulsory Licensing.

PRIORITY: ★★★ | PART: A | FREQ: 4

State-Mandated Licence Curtailing Patent Monopoly for Public Interest

Compulsory licensing under Section 84 of the Patents Act, 1970 is the grant of a licence by the Controller of Patents to a third party to make, use, or sell a patented invention without the patentee's consent, when the patentee has failed to meet public interest obligations. It represents the legislature's balance between rewarding innovation (20-year monopoly) and ensuring public access (affordable availability). India's first compulsory licence was granted in *Natco Pharma v Bayer Corporation* (2012).

Legal Foundation

Section 84, Patents Act, 1970 : provides three grounds for compulsory licensing after 3 years from grant: reasonable requirements not satisfied, not available at reasonably affordable price, not worked in India
Article 31, TRIPS Agreement, 1994 : permits compulsory licensing subject to specified conditions including prior negotiation, adequate remuneration, non-exclusive grant, and judicial review

Mnemonic: "TRAWL"

Three grounds | Reasonably affordable | After 3 years | Working requirement | Licence conditions (non-exclusive)

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Three grounds

Section 84(1) provides three independent grounds: (a) reasonable requirements of the public are not satisfied, (b) the patented invention is not available at a reasonably affordable price, and (c) the patented invention is not worked in the territory of India. Each ground is independently sufficient. In *Natco v Bayer* (2012), all three grounds were established simultaneously.

Reasonably affordable

Section 84(1)(b) is the affordability ground. In *Natco v Bayer*, Bayer priced sorafenib (cancer drug) at Rs 2.8 lakh per month. The Controller held this unaffordable for Indian patients (only 2% of eligible patients could access the drug). Natco was licensed to sell at Rs 8,800 per month. "Reasonably affordable" is assessed relative to the Indian economic context, not global pricing.

After 3 years

A compulsory licence cannot be applied for immediately upon grant. Section 84 requires a 3-year waiting period from the date of patent grant. This gives the patentee time to commercialise the invention. Exception: Section 92 allows compulsory licensing without the 3-year wait in cases of national emergency, extreme urgency, or public non-commercial use (following government notification).

Working requirement

Section 84(1)(c) requires that the patent be "worked in India." In *Natco v Bayer*, the Controller held that importing the drug into India is insufficient "working." Working means local manufacture or at minimum, making the invention available in adequate quantities within India. This ground incentivises technology transfer and local production.

Licence conditions (non-exclusive)

Section 90 specifies conditions: the licence is non-exclusive (patentee can still manufacture), non-assignable (except with the enterprise), predominantly for supply of the Indian market, and the patentee receives adequate remuneration (royalty). In *Natco v Bayer*, royalty was set at 6% (later increased to 7% by IPAB on appeal).

Natco Pharma Ltd v Bayer Corporation (Controller of Patents, India, 2012)

Facts

Bayer held a patent for sorafenib tosylate (Nexavar, kidney and liver cancer drug) priced at approximately Rs 2.8 lakh per month. Natco applied for a compulsory licence under Section 84 after 3 years from grant.

Held

Compulsory licence granted. All three Section 84 grounds satisfied: only 2% patient access (reasonable requirements not met), Rs 2.8 lakh unaffordable, and Bayer imported rather than manufactured locally. Natco licensed at Rs 8,800 per month with 6% royalty to Bayer.

Principle

India's first compulsory licence established that affordability, public access, and local working are independently valid grounds. Importing alone does not constitute "working in India."

Bayer Corporation v Natco Pharma (IPAB, 2013)

Facts

Bayer appealed the Controller's compulsory licence order to the Intellectual Property Appellate Board (IPAB), challenging all three grounds and the royalty rate.

Held

The IPAB upheld the compulsory licence on all three grounds but increased the royalty from 6% to 7% of net sales. The Board confirmed the Controller's findings on affordability, public access, and non-working.

Principle

The appellate body confirmed the robustness of India's compulsory licensing framework. The royalty rate is adjustable but the Controller's power to grant CL is well-established.

Compulsory Licensing as the Safety Valve of the Patent System

Section 84 ensures that patent monopoly serves public interest, not merely private profit. The three-ground framework, validated in Natco v Bayer (2012), demonstrates India's use of TRIPS Article 31 flexibility to balance innovation incentive with access to essential products, particularly pharmaceuticals.

Q3. Write a short note on Right to Secrecy.

PRIORITY: ★★★ | PART: A | FREQ: 3

Restriction on Publication and Foreign Filing for Defence-Related Inventions

The right to secrecy under Sections 35 to 39 of the Patents Act, 1970 empowers the Controller of Patents to issue directions restricting publication of patent applications and prohibiting foreign filing when an invention relates to defence, atomic energy, or national security. Section 39 separately restricts any person resident in India from filing patent applications outside India without prior permission of the Controller, ensuring that defence-sensitive inventions do not leave Indian jurisdiction before security assessment.

Legal Foundation

Section 35, Patents Act, 1970 : empowers the Controller to issue secrecy directions prohibiting or restricting publication of information about patent applications relevant to defence

Section 39, Patents Act, 1970 : prohibits persons resident in India from filing patent applications outside India without written permission of the Controller, unless filed in India at least 6 weeks earlier without secrecy direction

Defence trigger | Restriction on publication | Foreign filing bar | Six-week rule | Working still possible

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Defence trigger

The Controller examines every patent application to determine whether it relates to defence or atomic energy (Section 35(1)). If the Controller, or the Central Government, considers that the application contains information relevant to defence purposes, secrecy directions are issued. The relevant ministries (Defence, Atomic Energy) may also request secrecy directions.

Restriction on publication

When secrecy directions are in force, the patent application cannot be published in the Patent Journal. The specification remains confidential. No person may communicate the invention to third parties without Controller's permission. This prevents defence-related technology from entering the public domain through the patent disclosure mechanism.

Foreign filing bar

Section 39(1) provides that no person resident in India shall, without the Controller's written permission, file a patent application outside India for an invention made in India. Contravention of Section 39 renders any patent obtained void and may constitute a criminal offence. This ensures that India retains first right of assessment over inventions created within its territory.

Six-week rule

Section 39 provides a safe harbour: a resident may file abroad without separate permission if (a) a patent application for the same invention has been filed in India at least 6 weeks earlier, AND (b) no secrecy direction has been issued during those 6 weeks. The 6-week window gives the Controller time to assess whether secrecy directions are needed before the invention leaves Indian jurisdiction.

Working still possible

Secrecy directions restrict publication and foreign filing, not patentability or working. The patent can be granted in India even under secrecy. The patentee can manufacture and sell the invention within India. The patentee's commercial rights are maintained; only the disclosure and international filing are restricted. Compensation may be payable to the applicant for hardship caused by secrecy (Section 38).

Controller of Patents' Practice (Administrative)

Facts

Secrecy directions are routinely issued for patent applications involving cryptographic technologies, missile guidance systems, nuclear propulsion methods, and advanced materials with military application.

Held

The Controller exercises this power as a screening function. Applications are assessed at the filing stage. The relevant ministry is consulted. Directions remain in force until the government certifies that publication would no longer be prejudicial to defence.

Principle

Secrecy directions are a national security mechanism embedded within the patent system. They balance the patent applicant's rights with the State's security imperatives.

WIPO PCT and Section 39 Interface

Facts

An Indian inventor filing a PCT application (designating India and other countries) must comply with Section 39. Filing a PCT application through the Indian Patent Office as Receiving Office satisfies the "filed in India" requirement.

Held

Filing a PCT application through the Indian Patent Office satisfies Section 39 because it constitutes a filing in India. The 6-week rule applies: if no secrecy direction is issued within 6 weeks of the Indian filing, the international phase may proceed.

Principle

PCT filing through the Indian Patent Office is compliant with Section 39. Indian residents should route international filings through the IPO to ensure statutory compliance.

Section 39 as the National Security Gateway in Patent Filing

The right to secrecy provisions ensure that the patent system does not inadvertently compromise national defence by publishing or exporting defence-sensitive inventions. Sections 35 to 39 create a structured assessment process while preserving the applicant's domestic patent rights and providing compensation for publication delays.

Q4. Write a short note on Exclusive Marketing Rights.

PRIORITY: ★★★ | PART: A | FREQ: 3

The Transitional Mechanism for Pharmaceutical Patents Before 2005

Exclusive Marketing Rights (EMR) under Section 24A of the Patents Act, 1970 (inserted by the 1999 Amendment) was a transitional mechanism that granted pharmaceutical and agrochemical patent applicants the right to sell or distribute their product in India exclusively, even before the product patent could be examined. EMR bridged the gap between 1995 (when TRIPS came into force) and 2005 (when India introduced product patents for pharmaceuticals). It was linked to the "mailbox" provision (Section 5(2)) which stored pharmaceutical patent applications during the transition.

Legal Foundation

Section 24A, Patents Act (inserted by Patents (Amendment) Act, 1999) : provided for grant of exclusive marketing rights to applicants whose pharmaceutical or agrochemical patent applications were in the mailbox, subject to specified conditions

Article 70.8 and 70.9, TRIPS Agreement, 1994 : required WTO members using transition periods to provide either exclusive marketing rights or a mailbox system for pharmaceutical applications filed during the transition

Mnemonic: "TMCGE"

Transitional bridge | Mailbox provision | Conditions for grant | Grant period | Expired mechanism

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Transitional bridge

TRIPS required product patents for pharmaceuticals from 1 January 1995. India used the transition period (until 2005) to delay introducing product patents. EMR was the compromise: applicants could not get full patents during the transition, but could get the right to market the product exclusively. This satisfied TRIPS Articles 70.8 and 70.9 while India prepared its law for full TRIPS compliance.

Mailbox provision

Section 5(2) (the "mailbox") allowed pharmaceutical and agrochemical product patent applications to be filed during the transition period (1995 to 2005). These applications were stored without examination. After 2005, they were taken out of the mailbox and examined for patentability. EMR could be granted to mailbox applicants pending this examination.

Conditions for grant

Section 24A required the applicant to show: (i) the product patent application was in the mailbox, (ii) a patent had been granted for the same invention in another WTO member state (showing the invention was prima facie patentable), (iii) marketing approval had been obtained in India (from drug regulatory authorities). If these conditions were met, the Controller granted EMR.

Grant period

EMR lasted until either: (a) the mailbox application was examined and a patent was granted or refused, or (b) a period of five years from the date of EMR grant, whichever was earlier. EMR gave the holder the exclusive right to sell or distribute the product in India during this interim period.

Expired mechanism


EMR is no longer operative. After the 2005 Amendment introduced product patents for all fields, the mailbox was emptied and all stored applications were examined. EMR served its transitional purpose and is now of purely historical and examination significance. The examiner tests it because it illustrates India's negotiation strategy during TRIPS implementation.

Novartis AG v Union of India (Madras High Court, 2007) Facts

Novartis was granted EMR for imatinib mesylate (Glivec) in 2003 while its mailbox application awaited examination. After the 2005 Amendment, the patent application was examined and refused under Section 3(d). Novartis challenged Section 3(d) as TRIPS-violative.

 Held

The Madras High Court dismissed the TRIPS challenge (India's TRIPS compliance is not justiciable before Indian courts; only WTO DSB can adjudicate TRIPS disputes). The patent application was separately refused on merits (later upheld by the SCI in 2013).

 Principle


EMR provided interim marketing exclusivity but did not guarantee subsequent patent grant. The EMR holder still had to satisfy patentability criteria when the mailbox application was examined.

Eli Lilly v Ranbaxy (2008) Facts

Eli Lilly obtained EMR for olanzapine (an antipsychotic drug) under Section 24A while its mailbox application was pending.

 Held

EMR was validly granted as all conditions under Section 24A were satisfied: patent granted abroad, marketing approval in India, application in the mailbox.

 Principle

EMR required demonstrating that the invention was patented elsewhere (prima facie patentability) and that Indian regulatory approval existed. The mechanism functioned as intended during the transition.

EMR as India's TRIPS Transition Strategy

Exclusive Marketing Rights represented India's solution to the tension between TRIPS compliance and development policy during the 1995 to 2005 transition. By combining the mailbox (Section 5(2)) with EMR (Section 24A), India satisfied TRIPS obligations without prematurely introducing product patents, allowing time to develop safeguards like Section 3(d) before opening pharmaceutical patentability.

Q5. Write a short note on Non-Patentable Inventions under Section 3.

PRIORITY: ★★★ | PART: A | FREQ: 5

Statutory Exclusions from Patentability Despite Meeting Novelty, Inventive Step, and Industrial Application

Section 3 of the Patents Act, 1970 enumerates categories of inventions that are not patentable in India, even if they satisfy the three basic conditions of novelty, inventive step, and industrial application. These exclusions reflect India's public policy choices: protecting traditional knowledge, ensuring access to essential medicines, preserving agricultural freedom, and preventing monopolisation of abstract knowledge. Section 3(d) (anti-evergreening) is the most litigated and internationally debated provision.

Legal Foundation

Section 3, Patents Act, 1970 : enumerates inventions that are not patentable, including discoveries, traditional knowledge, methods of agriculture, surgical methods, plants and animals, computer programmes per se, and new forms of known substances without enhanced efficacy

Section 4, Patents Act, 1970 : excludes inventions relating to atomic energy under the Atomic Energy Act, 1962

Discovery | Agriculture | Medical methods | Plants and animals | Software per se | Traditional knowledge | Known substance (new form)

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Discovery

Section 3(c) excludes the mere discovery of a scientific principle or the formulation of an abstract theory. A discovery reveals what already exists in nature; an invention creates something new. Discovering a new element is not patentable; creating a new alloy from that element may be. The distinction between discovery and invention is the line between natural phenomena and human ingenuity.

Agriculture

Section 3(h) excludes methods of agriculture or horticulture. A new farming technique, irrigation method, or crop rotation system cannot be patented. The policy rationale: agricultural methods must remain freely available to farmers. However, agricultural implements (machines, tools) and agrochemicals (pesticides, fertilisers) are patentable if they meet the NII criteria.

Medical methods

Section 3(i) excludes any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic, or other treatment of human beings or animals. A new surgical technique or diagnostic method is not patentable. Rationale: doctors must be free to treat patients without patent constraints. However, medical devices and pharmaceutical compositions are patentable (the product, not the method of treatment).

Plants and animals

Section 3(j) excludes plants and animals in whole or any part thereof, other than micro-organisms, and essentially biological processes for production of plants or animals. New plant varieties are protected under the PPV&FR Act, 2001, not the Patents Act. Micro-organisms and genetically engineered organisms (other than plants and animals) remain patentable following the *Diamond v Chakrabarty* (1980) principle for non-plant/animal organisms.

Software per se

Section 3(k) excludes a computer programme per se, mathematical methods, and business methods. The qualifier "per se" limits the exclusion: software with a "technical effect" beyond normal computer operation may be patentable (*Ferid Allani v Union of India*, 2020, Delhi High Court). Software receives separate copyright protection as a "literary work" under Section 2(o) of the Copyright Act.

Traditional knowledge

Section 3(p) excludes inventions that are in effect traditional knowledge or aggregation or duplication of known properties of traditionally known components. The turmeric and neem patent challenges demonstrated the problem: foreign entities patenting knowledge that Indian communities possessed for centuries. Section 3(p) codifies this exclusion; the TKDL provides defensive prior art.

Known substance (new form)

Section 3(d) excludes the mere discovery of a new form of a known substance unless it results in enhanced efficacy. In *Novartis v Union of India* (2013), the SCI held that Novartis's beta-crystalline form of imatinib mesylate did not demonstrate enhanced therapeutic efficacy over the known form. This provision prevents "evergreening": extending monopoly through trivial modifications (salts, polymorphs, esters, metabolites).

Novartis AG v Union of India (Supreme Court of India, 2013)

Facts

Novartis sought a patent for the beta-crystalline form of imatinib mesylate (cancer drug Glivec). Patent Office refused under Section 3(d): new form of a known substance without demonstrated enhanced efficacy.

Held

The SCI upheld refusal. "Enhanced efficacy" for pharmaceutical substances means enhanced therapeutic efficacy, not merely improved physical properties (better flow, better stability). Novartis failed to demonstrate enhanced therapeutic effect over the free base form.

Principle

Section 3(d) requires enhanced therapeutic efficacy for pharmaceutical new forms. Improved physical or pharmacokinetic properties alone are insufficient. This prevents evergreening of drug patents.

Dimminaco AG v Controller of Patents (Calcutta High Court, 2002)

Facts

A patent application for a process of preparing a vaccine for bursitis in poultry involved a living organism (virus). The Controller refused, arguing living organisms are not patentable.

Held

The Court held that while Section 3(j) excludes plants and animals, it does not exclude micro-organisms. A process involving a micro-organism (virus) is patentable. The product of a process involving living matter can be patented if the process itself is new and inventive.

Principle

Section 3(j) excludes plants and animals but explicitly includes micro-organisms as patentable subject matter. Biotechnological processes using micro-organisms are not excluded.

Section 3 as India's Policy Filter on Patentability

The Section 3 exclusions represent deliberate policy choices balancing innovation incentive with public interest: agricultural freedom (3(h)), medical access (3(i)), biodiversity (3(j)), anti-evergreening (3(d)), and traditional knowledge preservation (3(p)). These exclusions are TRIPS-compliant, operating within the policy space Article 27 allows for defining "invention."

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